



July 16, 2013

Chairman Dave Reichert
Subcommittee on Human Resources
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Ranking Member Lloyd Doggett
Subcommittee on Human Resources
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: July 17, 2013 Hearing on Evaluating Efforts to Help Families Support their Children and Escape Poverty

Dear Chairman Reichert and Ranking Member Doggett:

Family Equality Council is the national organization that supports and represents the three million parents who are lesbian, gay, bisexual, and transgender (LGBT) and their six million children across the United States. We embody a community that works hard and strives in every way to create a safe, stable, and loving environment for our families. When children are living in poverty, the root causes need to be addressed. Our organization works in many areas to help decrease poverty among our community's families, including advocacy in foster care, adoption, employment discrimination, health care, immigration, and public benefits. We are pleased to have the opportunity to submit testimony for this subcommittee hearing on efforts to help families support their children and escape poverty.

In his opening statement at the June 18, 2013 hearing *Reviewing How Today's Fragmented Welfare System Fails to Lift Up Poor Families*, to which we also submitted testimony, Chairman Reichert shared his belief that "[o]ur goal is to help more low-income families leave poverty and

achieve the American Dream. That's not a Republican goal, or a Democrat goal. And the fact that too many of our fellow citizens have seen that goal slip from their grasp in recent years is our call to action." This is a noble goal and one that LGBT families share. In order to effect this rise from poverty, some individuals need the assistance of social safety net programs provided by our federal government. Unfortunately for LGBT families, the application and acceptance process is cumbersome and often unsuccessful.

As a community, LGBT families are economically vulnerable as a result of many societal factors. According to a recent Williams Institute report, LGBT individuals, families, and their children endure higher levels of poverty than their heterosexual counterparts.¹ This report incorporated data from four separate studies comparing poverty rates between heterosexual and LGBT people individually and as couples.² Children in same-sex couple households are almost twice as likely to be poor. Children in male same-sex couple households have a 23.4% poverty rate and 19.2% of children in female same-sex couple households live in poverty. This is compared to the 12.1% of children in married, different-sex households. Children in a same-sex couple family are also more likely to live with incomes below 200% of the Federal Poverty Line (FPL).³

There are a variety of reasons why LGBT people are more vulnerable to poverty. The community lacks legal protections from employment discrimination. LGBT families are excluded from tax benefits and many government financial and health care assistance programs. LGBT people are working to provide for themselves and their families but may need some financial assistance and tax credits to make ends meet. Data in the Williams Institute report indicates that LGBT people are receiving government aid in slightly higher percentages as a result of these hurdles that they face to sufficiently support themselves.⁴ That is not to say that being approved for welfare services is not alone a challenge, especially for same-sex couples with children. The focus of this testimony will be on the challenges many LGBT families face when attempting to access welfare safety net programs and worker tax benefits.

Qualification for government benefits tends to be tied to marital status. The recent Supreme Court decision invalidating the DOMA definition of marriage should make qualification for federal benefits a bit easier for same-sex couples legally married in their home state. This change, however, does not help same-sex couples and their children in the 37 states in which

¹ M.V. Lee Badgett, Laura E. Durso, & Alyssa Schneebaum, "New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community," The Williams Institute, UCLA School of Law, June 2013, *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

² The report includes data derived from 2010 American Community Survey, 2006-2010 National Survey of Family Growth, 2007-2009 California Health Interview Survey and a 2012 Gallup Daily Tracking Poll.

³ *Supra* note 1.

⁴ *Id.*

same-sex marriage is still inaccessible. This discrepancy in treatment between the children of same-sex and opposite-sex parents creates a two-tiered system of social safety net programs. A simple application and qualification process exists for different-sex couples and a time intensive, embarrassing, and often fruitless process exists for LGBT families.⁵

At the previous hearing in this series, Congressman Doggett introduced the topic of the Earned Income Tax Credit (EITC) and stressed its importance as a tool to support working families. Mention was repeatedly voiced by congressmembers and witnesses of this tax benefit and its ability to lift hardworking Americans out of poverty. For the LGBT community, however, this tax credit is difficult to obtain. This credit is intended to assist low wage earners with children. The definition used to determine the relationship of children, however, denied eligibility to many same-sex partners raising children. For the EITC purposes, the child must be the tax filer's son, daughter, stepchild, eligible foster child, adopted child or a descendant of any of them or his/her brother, sister, half-brother, half-sister, stepbrother, stepsister, or a descendant of any of them.⁶ These requirements do not take into consideration families living in states where joint, second parent, or step-parent adoption is rare or completely unobtainable for LGBT parents.

Children fall through the cracks when government programs refuse to recognize their families as families. These programs, providing monetary assistance, food, health insurance, childcare assistance, and tax credits use narrow definitions of family to determine eligibility.⁷ Actual household size may not be taken into account when assessing the means of support available to the family. In addition, the lack of universal adoption and parentage laws creates confusion in the application for benefits and ultimately bars access to social service programs to children of same-sex couples.

Take, for example, a household consisting of two parents and two children. Post-DOMA, if this couple is married in a state where same-sex marriage is legal, the federal government will recognize the relationship for the purpose of social services. This qualification may not automatically apply, however, to LGBT couples in non-same-sex marriage states, or states without comprehensive access to parent-child relationships. While this family would appear to

⁵ Burns, Crosby, Center for American Progress, *The Federal Budget and Gay and Transgender Families: Not All Families Are Equal Under the Law* April 2012, found at http://www.americanprogress.org/wp-content/uploads/issues/2012/04/pdf/lgbt_budget.pdf.

⁶ <http://www.irs.gov/Individuals/EITC,-Earned-Income-Tax-Credit,-Questions-and-Answers>

⁷ Movement Advancement Project, Family Equality Council and Center for American Progress, "All Children Matter: How Legal and Social Inequities Hurt LGBT Families (Full Report)," October 2011, p. 52, *condensed version available at* www.lgbtmap.org/lgbt-families.

be a four-person household, the household size is reduced to three for the calculation of assistance needed, lowering the amount of vital aid for which the family would qualify.

Similarly, this family could be denied the EITC. If the partner who is working to support the family is not the biological, foster, or adoptive parent of their children, he or she would not qualify for the credit to assist the whole family. This credit meant to bring hardworking individuals out of poverty would be refused to the LGBT applicant as a result of the narrow relationship requirement.

These financial assistance challenges create a vicious cycle for LGBT families. Both parents may want to work full time but cannot because they do not earn enough to afford the child care costs associated with being out of the home and, because of a lack of legal relationship with their child, do not qualify for childcare assistance. Suppose a same-sex couple used reproductive assistance to conceive their child and then arrived at a point in their lives when they needed to apply for TANF assistance. TANF procedures call for location of a second biological parent in order to determine benefits. Penalties can be applied to these parents for not being able to identify the second biological parent as well as delays in processing while helping a caseworker understand their situation. Perhaps only the non-legal parent has healthcare through his/her employer and therefore cannot cover the children but the family does not qualify for CHIP because of the aforementioned means test. The family must pay for private insurance or pay exorbitant medical bills for their uninsured children. Either way, their modest income is now stretched even farther.

Some strides are being made to combat the challenges faced by LGBT people in need of assistance. Food assistance programs use a broader definition of household size. For the purposes of free and reduced lunches, WIC, and SNAP, there is no requirement that applicants be legally or biologically related to be included in the household.⁸ The benefits go to those who sit at the table and eat together: the definition of family. Also, the Free Application for Federal Student Aid (FAFSA) is being revised to require applicants to list both of their parents if they live together, regardless of gender, marital status, or sexual orientation. This change will make applying for financial aid less complicated for the applicant and the processors. Clarifications to the Family Medical Leave Act have made it clear that a biological relationship is not required to qualify for leave to care for an individual when acting in loco parentis.⁹

⁸ *Id.*

⁹ Lepnick, Nancy J. Deputy Administrator, Administrator's Interpretation 2010-3, U.S. Department of Labor, Wage and Hour Division, http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf.

Changes to the narrow definitions of family for the purpose of applying for welfare assistance and tax credits will help break the vicious cycle. Timely processing of applications and accurate assessment of need could shorten the time a family needs to receive these forms of assistance.


The solution to many of these shortcomings is to create consistent, broad definitions of family for all federal programs. For TANF, the definition would expand the “assistance unit.” For CHIP, the definition would include same-sex partners and children for whom an adult is standing *in loco parentis*. For Medicaid and SSI, the definition would include *de facto* parents.¹⁰ Relationships, for the EITC, would include children of same-sex partners residing together as a household.

The Employment Non-Discrimination Act (ENDA) is currently undergoing consideration in the Senate (S. 815) to eliminate some of the obstacles LGBT individuals face in the workforce which should lead to higher LGBT employment rates and less need for social safety net benefits. Passing this crucial legislation would go incredibly far towards stabilizing economic security for LGBT parents and their children. The bi-partisan sponsorship of the Every Child Deserves a Family Act (ECDFA) (H.R. 2028) is a step toward allowing LGBT couples to create families nationwide and place our nation’s children in secure, financially sound, loving homes. Family Equality is working on these projects and would be happy to share our work and family stories with you.

The American family comes in various forms. The one thing we have in common is a desire to provide a secure and stable home for our children. No matter how hard we work to accomplish this goal, times can get rough. The welfare system exists to assist families during these rough times. Together we can ensure the best outcomes for these children and families, while making sure that government aid is distributed as efficiently as possible.

Thank you again for the opportunity to testify on this important issue. If you have any questions about our testimony, please email me at ehecht@familyequality.org or contact me by phone at 202-496-1285.

Thank you,



Emily Hecht-McGowan

¹⁰ *Supra* note 7.

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